NATIONAL SECURITY AND THE CONVENTION ON THE LAW OF THE SEA

This publication has been prepared by the United States Department of Defense to inform individuals in the Executive and Legislative Branches about the national security issues relating to the United Nations Convention on the Law of the Sea.

NATIONAL SECURITY AND THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Second Edition
January 1996

Executive Summary

This position paper analyzes the Department of Defense's interests in having the United States become a party to the 1982 United Nations Convention on the Law of the Sea (Convention), as modified by the Part XI Implementation Agreement (Agreement). This new Agreement corrects the flaws in the deep seabed mining regime set out in the Convention that were first articulated by President Reagan in 1982.

Following adoption of the Agreement by the United Nations General Assembly in 1994, the United States became a signatory, paving the way for this country to become a party both to the Convention and the Agreement. The President transmitted the Convention and the Agreement to the United States Senate for its advice and consent to accession and ratification, respectively, on October 7, 1994.

Our principal judgment is that U.S. national security and public order of the oceans are best maintained by a universally accepted law of the sea treaty. Reliance upon customary international law rather than the modified Convention will serve our interests much less effectively, and could result in the United States placing its armed forces in harm's way because these customary principles of law are not universally understood or accepted. The Convention is the best way to reduce the likelihood of situations in which U.S. forces must be used to assert navigational freedoms, as well as the best method of fostering the use of various conflict avoidance schemes which are contained in the Convention.

The Convention, as modified, may not represent an ultimate solution to all oceans policy issues, nor was it intended as such. However, the accomodations embodied in the Agreement and the Convention as a whole, establish an ocean regulatory regime that is clearly in the national security interest of the United States. We now have before us a rare window of opportunity to resolve favorably the vital navigation and other issues, including deep seabed mining, which are addressed by the Convention.

The Department of Defense's key conclusions are:

- Access to the oceans throughout the world, including areas off foreign coasts at great distances from the United States, is vital to U.S. security and economic interests in global navigation, overflight and telecommunications. These interests are best served

by a globally accepted public order of the oceans that minimizes the challenges to and costs of securing such access.

- By providing a comprehensive and stable legal regime for the oceans, a universally accepted Convention, as modified by the Agreement, will promote our strategic goals of free access to and public order of the oceans and the airspace above.

- More than 150 countries, including the U.S., participated in the negotiation of the Convention between 1973 and 1982. We achieved our fundamental objectives of solidifying navigational rights, restraining the growth of excessive maritime claims, and codifying key legal provisions in the areas of environment, fisheries, and sovereign immunity which balance the vital interests of maritime and coastal states. The fisheries provisions were recently supplemented by a newly negotiated Convention on Straddling Fish Stocks and Highly Migratory Fish Stocks that builds upon the Law of the Sea Convention and utilizes its institutions, and that provides new protections for U.S. interests with respect to conservation of high seas fisheries.

- Since 1979, DOD and the Department of State have been actively involved in countering excessive maritime claims through the Freedom of Navigation (FON) program. However, relying solely on diplomatic and operational challenges is less desirable than establishment, through the Convention, of universal norms of behavior and methods of resolving conflict.

- The Agreement Relating to the Implementation of Part XI of the Convention, designed to modify the seabed mining provisions of the Convention, was adopted by the U.N. General Assembly on July 28, 1994. As of December 1995, 125 States have agreed to be bound provisionally by the Agreement, including the United States, all major industrial nations, and most U.S. allies. The Agreement is expected to enter into force by mid-1996. Correction of the Part XI flaws now allows the United States to take advantage of the opportunity to adhere to the modified Convention, realize its national security benefits and permit us to ensure those rights from within the structure of the Convention.

- The Convention entered into force on November 16, 1994. As of December 31, 1995, 83 States are party, including Australia, Brazil, Egypt, Germany, Greece, India, Italy, and Mexico. Key maritime and industrial nations have informally indicated their intention to become party to the Convention and the Agreement once their internal ratification procedures are complete, including: Argentina, Belgium, Canada, Chile, China, Denmark, Finland, France, Ireland, Japan, Republic of Korea, Luxembourg, the Netherlands, New Zealand, Panama, Portugal, South Africa, Spain, Sweden, Switzerland, Ukraine, and the United Kingdom. To maintain American influence in global maritime affairs, the U.S. must become a party to the Convention by May 1996 in order to participate in the selection of members of key institutions created by the Convention, and to derive numerous other benefits.

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INTRODUCTION

On October 7, 1994, the President transmitted the 1982 United Nations Convention on the Law of the Sea to the United States Senate for its advice and consent to accession. The Department of Defense has long supported the Convention on national security grounds. As Secretary of Defense William Perry stated on July 29, 1994, "The nation's security has depended upon our ability to conduct military operations over, under, and on the oceans. We support the Convention because it confirms traditional high seas freedoms of navigation and overflight; it details passage rights through international straits; and it reduces prospects for disagreements with coastal nations during operations."

U.S. OCEANS POLICY: 1973-1996

Between 1973 and 1982, more than 150 nations participated in the negotiation of the 1982 United Nations Convention on the Law of the Sea. From the U.S. perspective, the Convention was a success, save for the provisions dealing with deep seabed mining. It secured much needed agreement to limit the breadth of the territorial sea to 12 nautical miles (NM), in the face of a large number of nations seeking to establish territorial sea claims of up to 200 NM or more, and struck a positive balance between coastal States and maritime States on issues such as marine pollution, fisheries and mineral resource exploitation, as well as with regard to navigational freedoms through the waters and airspace of exclusive economic zones (EEZs), territorial seas, straits, and archipelagic waters.

However, while United States maritime interests were significantly protected and advanced by the balance struck among these interests, the provisions dealing with deep seabed mining in Part XI of the Convention were not satisfactory. As a result, on July 9, 1982, President Reagan announced that eleven sessions of negotiations had failed to produce a "universal" agreement which accommodated the diverse interests represented at the conference on the full range of oceans uses. Of particular concern to the U.S. and other developed countries were those seabed-mining provisions that deterred development, did not guarantee a decision-making role for the U.S. properly reflecting its interests, permitted amendments to the regime without U.S. consent, mandated transfers of privately owned technology, permitted sharing of benefits with national lib-

eration movements, and failed to assure access for those pioneer investors who sought to develop deep-seabed resources privately.

In 1983, President Reagan issued the U.S. Ocean Policy Statement which declared, in essence, that the United States would follow the non-seabed-mining provisions of the Convention because they fairly balance the interests of the United States and all States with respect to traditional uses of the oceans. At the same time, President Reagan asserted a 200 NM EEZ on behalf of the United States, in addition to confirming the United States exercise of sovereign rights over the resources of the continental shelf.

President Reagan also announced that the United States would "exercise and assert its navigation and overflight rights and freedoms on a worldwide basis consistent with . . . the Convention [but not] . . . acquiesce in unilateral acts of other States designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses." President Reagan's statement reaffirmed the ongoing U.S. practice since 1979 of challenging, through diplomatic and navigational assertions, maritime claims which are inconsistent with the Convention. More than 300 operational challenges and more than 100 diplomatic protests have been made since 1979 under the Freedom of Navigation (FON) Program challenging excessive coastal State claims. Finally, President Reagan issued a Proclamation on December 27, 1988 extending the territorial sea of the United States and its possessions from 3 to 12 NM, the limit authorized by the Convention.

Virtually all major maritime and industrialized nations declined to become parties to the Convention in its original form. Nevertheless, the Convention entered into force on November 16, 1994, one year after the sixtieth State deposited its instrument of ratification or accession. As detailed below and in ***Tab B***, however, there has been a rapid increase in the number of States joining the Convention since the U.N. General Assembly adopted the 1994 Agreement modifying the Convention's objectionable seabed mining provisions. As of December 1995, the Convention has 83 parties (82 independent States and the Cook Islands).

SCOPE OF THE CONVENTION

The text of the Convention is the result of fifteen years of informal and formal negotiations in which the United States was an active and influential participant. Opened for signature on December 10, 1982, the Convention consists of 320 articles and nine annexes, treating virtually every topic of importance to coastal and maritime States. Among the subjects covered: breadth of the territorial sea, contiguous zone, exclusive economic zone (EEZ), and continental shelf; rights of transit, innocent and archipelagic sea lanes passage; right of States to conduct marine scientific research; a balancing of rights be-

tween fishing States and coastal States concerning management of fish stocks, as well as empowerment of regional fishing compacts; establishment and apportionment of responsibility between the coastal States and flag States to take measures to protect the marine environment; creation of special regimes for the management and protection of marine mammals, anadromous (salmon) and highly migratory (tuna) fish species; and establishment of a broad range of dispute settlement options so that universal participation would be reasonably assured. However, as noted above, Part XI of the Convention established a regime governing deep seabed mining which was objectionable to the United States and other industrialized countries.

EFFORTS TO REFORM THE CONVENTION

In 1990, then U.N. Secretary-General Javier Perez de Cuellar convened informal meetings in New York to begin negotiation of a multilateral instrument which would correct the objectionable portions of Part XI. **The objective was universal adherence to the Convention.** Approximately 30 developing and developed countries, including the United States, participated in the discussions which resulted in adoption by the U.N. General Assembly of an Agreement Relating to Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea (Agreement), on July 28, 1994.

The Agreement modifies the objectionable provisions of Part XI and related Annexes to create a new deep seabed mining regime. The substantial modifications accomodate the objections of the United States and other industrial nations. It provides a stable and internationally recognized framework for mining to proceed in response to any future demand for minerals.

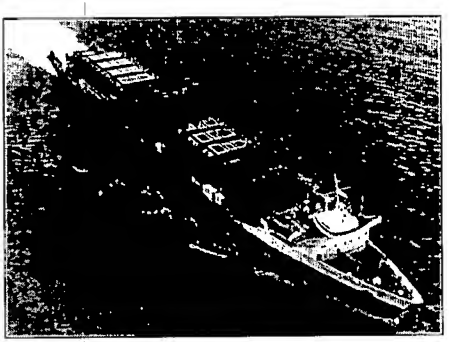
As detailed in ***Tab B***, 125 entities (123 independent States, the Cook Islands and the European Economic Community) have now agreed to apply the Agreement provisionally, including the United States and other major industrial nations. The Agreement has been provisionally applied since November 16, 1994, and is expected to enter into force by mid-1996 for States that have consented to be bound.

VITAL NATIONAL SECURITY INTERESTS ARE ADVANCED BY THE UNITED STATES BECOMING A PARTY TO THE CONVENTION

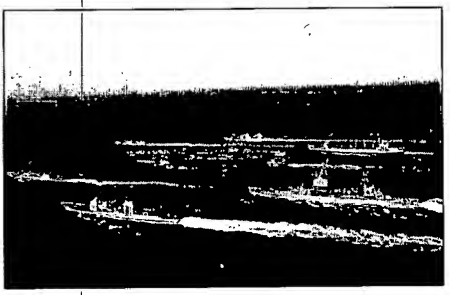
National security interests have been a critical component of the 25 year effort to achieve a comprehensive Convention. They were at the heart of the Reagan, Bush and Clinton Administrations' policy of finding a satisfactory solution to the Part XI problem that would enable the United States to become party to a widely ratified Convention.

The national security interests in having a stable oceans regime are, if anything, even

LAW OF THE SEA



DOD's ability to maintain forward presence depends on its ability to sustain military operations around the globe. The vast majority of logistics support and equipment travels on both public vessels or under DOD charter arrangements. Effective utilization of this scarce sealift capacity, is dependent upon open sea lanes of communication so that this shipping can enjoy unimpeded and expeditious passage.



Carrier Battlegroups remain one of the most flexible instruments which the National Command Authority can use as an instrument of diplomacy or to provide potent and flexible power if diplomatic efforts fail.

The regime of transit passage extends to surface and submerged navigation of recognized international straits as well as overflight. The Strait of Gibraltar, is the gateway for the flight of many U.S. military aircraft to and from bases in the Eastern United States to littoral areas in the Mediterranean as well as the Middle East and Turkey. The right of overflight is exercised daily in routine sustainment operations as well as during emergency logistics resupply efforts (Israel, 1973) and in combat situations when land-overflight rights have been denied (Raid on Libya, 1986).

Figure 1.

more important today than in 1982, when the world had a roughly bipolar political dimension and the U.S. had more abundant forces and overseas bases to project power wherever needed. *[see Figure 1]*

The navigational rights and freedoms embodied in the Convention are in daily use by commercial maritime and air traffic, and the naval and air forces of the United States and its allies. The core rights assured by the Convention include the following:

- ***Innocent Passage.*** This right of ships to continuous and expeditious passage not prejudicial to the peace, good order, or security of coastal States is the primary right of nations in foreign territorial seas. Naval vessels rely on this right to conduct their passage expeditiously and effectively. The Convention plays a special role in codifying the customary right of innocent passage for ships on the surface and contains an exhaustive list of the types of shipboard activities which are forbidden. It also describes the extent of, and limitations on, the right of coastal States to regulate and suspend innocent passage.

- ***Transit Passage.*** The Convention protects and preserves free transit on, under and over international straits. Free transit of straits is essential to the global mobility of U.S. forces and U.S. trade. More than 135 straits, which otherwise would have been severely restricted as a result of the extension of the territorial seas to 12 NM, are open to free passage under the Convention's regime of transit passage. Less restrictive than innocent passage, ships and aircraft engaged in transit passage may pass through straits continuously and expeditiously in their normal mode. Submarines may pass through straits submerged, naval task forces may conduct formation steaming, aircraft carriers may engage in flight operations, and military aircraft may transit unannounced and unchallenged. Three significant conflicts illustrate the importance of the right to transit straits freely:

  - During the 1973 Yom Kippur War, overflight of the Strait of Gibraltar enabled U.S. military aircraft to conduct emergency resupply of Israel following the denial of overflight of land territory by certain NATO Allies.

  - Following the State-sponsored terrorist attack on U.S. armed forces in Berlin, U.S. military aircraft overflew the Strait of Gibraltar to conduct a raid on Libya on April 14, 1986, after certain NATO Allies denied the U.S. permission to overfly their land territory.

  - Before and during the Persian Gulf War, the U.S. and other coalition naval and air forces traversed the critical choke points of Hormuz and Bab el Mandeb. The right of free transit set forth in the Convention provided an authoritative basis for common allied positions and action. In preparation for Operation Desert Storm, 3.4 million tons of dry cargo and 6.6 million tons of fuel had to be transported to U.S. and allied forces in the Gulf. Ninety-five percent of the cargo moved by ship through the straits. *[see Figure 2]*

- ***Archipelagic Sea Lanes Passage.*** The right of transit by ships and aircraft through archipelagos, such as the Philippines and Indonesia, can have a significant impact on the ability of military forces to proceed to an area of operations in a timely and secure manner. The Convention's guarantee of archipelagic

Figure 2. Straits Chart

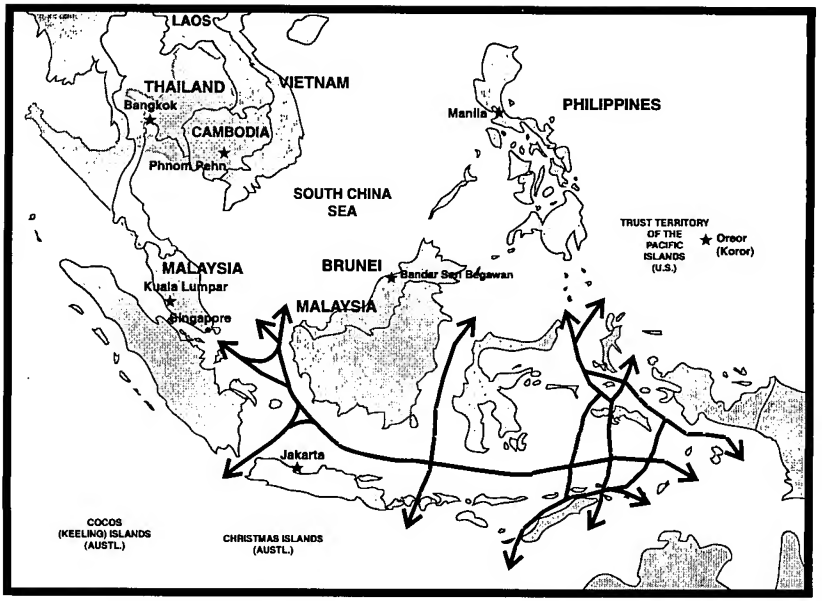


Figure 3. The Indonesian Archipelagic Crossroads.

The straits in the Indonesian Archipelago are a major chokepoint in the most direct and cost-effective maritime route linking the Pacific and Indian Oceans. Unimpeded transit through straits and sea lanes under the regime of archepelagic sea lanes passage is critical to the movement of trade goods, strategic minerals, military forces, and energy supplies to sustain the U.S. economy.

sea lanes passage permits transit in the normal mode between one part of the high seas or EEZ and another through the normal routes used for international navigation or through sea lanes approved by the International Maritime Organization (IMO). To date, there has been a general trend toward compliance with the Convention by nations claiming archipelagic status. However, the U.S. opportunity to influence the actions of archipelagic States which choose to designate sea lanes, and to ensure compliance with the Convention's requirement to submit sea lane proposals to the IMO, would be diminished as a non-party to the Convention. *[see Figure 3]*

- ***Freedoms of Navigation, Overflight, and Other Uses in the EEZ.*** A third of the world's oceans, including entire seas such as the Mediterranean, the Red Sea, and the Persian Gulf, are within 200 NM of the coast, and thus within the permissible limits of the EEZ. We are separated from most places in the world by the EEZ of at least one other State. The Convention expressly preserves in the EEZ the high seas freedoms of navigation, overflight, laying and maintenance of submarine cables and pipelines, and related uses. Respect for these freedoms by coastal States around the world is indispensible to our global mobility, and to our national security, trade and communications. Most coastal States have already implemented their right to an EEZ, including rights with respect to regulation of pollution from ships navigating in the zone. The challenge is to ensure that they respect the limitations on those rights set forth in the Convention. Should we fail, our global mobility will be prejudiced, and the cost of securing mobility by other means could escalate dramatically in some places and become prohibitive in others.

- ***High Seas Freedoms.*** The Convention makes an important contribution by defining the types of activities which are permissible beyond territorial seas. Consistent with the principle of "due regard" for the rights of other users, U.S. forces remain free to engage in task force maneuvering, flight operations, military exercises and surveys, surveillance and intelligence activities, telecommunications and space activities, and ordnance testing and firing.

- ***Sovereign Immunity of Warships and Other Public Vessels and Aircraft.*** The concept of sovereign immunity of warships and other public vessels has come under increasing assault by coastal States wishing to circumscribe this historic right on the basis of security or environmental concerns. The Convention contains a vitally important codification of the customary law principle that naval auxiliaries are entitled to the same immunity from enforcement jurisdiction by non-flag States as warships enjoy. To support military operations around the globe, there must be the assurance that military vessels and their cargoes can move freely without being subject to levy or interference by coastal States. The Convention also makes great strides in harmonizing environmental and security concerns by assigning to the flag State the responsibility to adopt appropriate measures for sovereign immune ships and aircraft to respect the marine environment.

Recent events in North Korea, Haiti, Rwanda, Iraq and the Balkans serve as important reminders that we still live in an uncertain and dangerous world. Threats to world order and U.S. interests in the post-

Cold war era include:

- Ethnic rivalry and separatist violence within and without national borders;
- Regional tensions in areas such as the Middle East and Northeast Asia;
- Humanitarian crises of natural or other origin resulting in starvation, strife, or mass migration patterns;
- Conflict over mineral and living resources including those that straddle territorial or maritime zones; and
- Terrorist attacks and piracy against U.S. persons, property, or shipping overseas or on the high seas.

These challenges are considerably different from those which dominated thinking in the era following World War II. What has not changed, however, is that many U.S. economic, political, and military interests are located far away from the United States. The United States has always been a maritime nation and we must have substantial air and sealift capabilities to enable our forces to be when and where they are needed. **Assurance that key sea and air lines of communication will remain open as a matter of international legal right and will not become contingent upon approval by coastal or island nations is an essential requirement for implementing our national security strategy.**

Global mobility is the key to deterrence, and deterrence is the key to avoiding conflict. Without international respect for the rights and freedoms of the navigation and overflight set forth in the Convention, exercise of our forces' mobility rights would be jeopardized. Disputes with littoral States would delay action and be resolved only by protracted political discussions, frequently entailing demands for expensive concessions on our part. The response time for U.S. and allied/coalition forces based away from potential areas of conflict would lengthen. Deterrence would be weakened — particularly when our coalition allies do not have sufficient power projection capacity to resist illegal claims. Forces likely would arrive on the scene too late to make a difference, affecting our ability to influence the course of events consistent with our interests and treaty obligations. Responses to aggression must be swift and effective. For example, the rapid insertion of forces by sea and air in the Fall of 1994, in response to troop deployments by Iraq, deterred aggressive behavior and demonstrated the importance of maintaining our mobility through key choke points. ***[see Figure 4]***

U.S. accession will substantially enhance the authoritative force of the Convention. The more authoritative the Convention, the more likely it is to guide and restrain the behavior of other States. For example, provisions in the Convention have already proven invaluable in resolving the following issues which have strong national security implications:

- Bilateral discussions with the former Soviet Union following the Black Sea "bumping" incident, resulting in the US-USSR Uniform Interpretation of the Rules of International Law Governing Innocent Passage Through the Territorial Sea, signed at Jackson Hole, Wyoming on September 23, 1989;

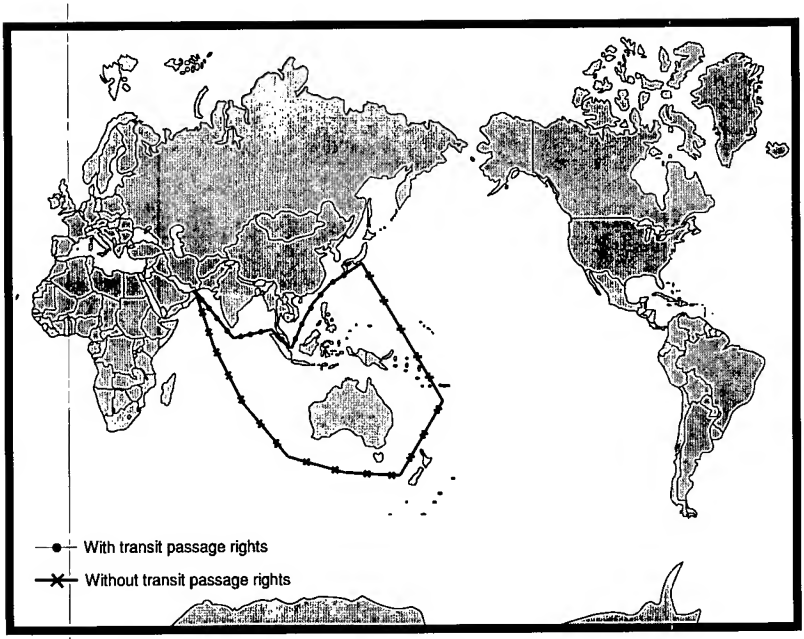


Figure 4. Transit Passage: Battle Group Cost and Time Savings

If prevented from transiting through the Indonesian Archipelago and the Malaccan Straits, a battle group transiting from Yokosuka, Japan to Bahrain would have to reroute around Australia. Assuming a steady 15 knot pace, the six ship battle group (all consuming conventional fuel) would require an additional 15 days to transit an additional 5,800 nm. Additional fuel cost would be approximately $7.0 million.

- Technical discussions between U.S., Indonesian and Philippines officials concerning archipelagic sea lanes passage through the Indonesian and Philippines archipelagos; and

- Technical discussions with other major maritime powers regarding regulations pertaining to passage through key straits, rules for establishing straight baselines, and resolution of maritime boundary disputes.

A universal Convention offers considerable promise because of the flexibility which it provides to States to resolve disputes over conflicting uses of the sea through the employment of any of four dispute resolution mechanisms. Even though the United States and certain other States will exercise their right to exclude military activities from compulsory jurisdiction, as a party we can use these mechanisms to restrain excessive claims by foreign coastal States because they usually affect non-military activities as well. The large number of "hot spots" on the globe (Bosnia, North Korea, the Middle East, the Persian Gulf, and the former Soviet Union) underscore the need for additional methods of resolving conflicts.

PROTECTION OF THE ROUTES OF INTERNATIONAL TRADE, ACCESS TO CRITICAL OIL AND GAS RESOURCES, AND THEIR MODES OF TRANSPORT, DEPEND UPON A STABLE OCEANS REGIME IN WHICH NAVIGATIONAL RIGHTS ARE ASSURED

To be secure and influential in the international political arena, the United States must sustain strong economic growth. In the 13 years since the United States rejected the Convention's seabed mining regime, our country has become more economically dependent than ever upon access to global markets. U.S. economic growth is closely linked to the world economy as a whole and the majority of that trade is carried on and over the world's oceans. Seaborne commerce exceeds 3.5 billion tons annually and accounts for 80 percent of trade among nations. Universal adherence to the Convention will provide the predictability and stability which international shippers and insurers depend upon in establishing routes and rates for global movement of commercial cargo.

When we think about strategic mobility, we often overlook the interdependencies between commercial transportation and our standard of living. Commercial ships (unlike warships) do not have the ability to resist illegal action by coastal States. Thus, they are the usual victim when rights to free and unencumbered access to the high seas, foreign territorial waters, archipelagic waters and international straits are threatened or restricted.

The "Tanker War" between Iran and Iraq during their 1980-88 conflict is a good example of how illegal activities on the part of coastal States toward non-belligerent shipping can have a direct and lasting effect on the United States strategic interest in assuring the movement of petroleum from the Persian

Gulf to Western economies (including our own). The following statistics are telling:

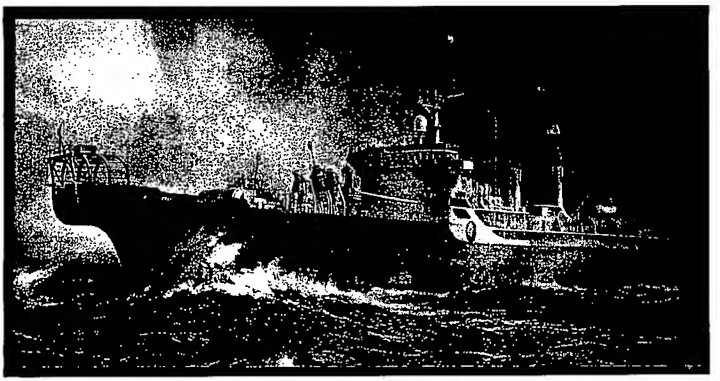
- In the 8 year conflict between Iran and Iraq, 543 ships were attacked, mostly in international waters.
- 53 U.S. lives were lost in attacks on U.S. military vessels; a total of 200 merchant sailors were killed.
- The majority of ships attacked flew the flags of States unconnected with the conflict between Iran and Iraq.
- Over 80 ships were sunk or declared a total loss resulting in over $2 billion in direct losses to cargo and hulls.
- Hull insurance rates increased 200 percent worldwide. Of course, these rates were passed on to consumers in the form of higher prices.
- Fears that the tanker war would result in serious disruption of available oil supplies pushed the cost of oil supplies from approximately $13 to $31 per barrel. Total cost to the world economy was projected by some to exceed $200 billion.
- No plausible combination of decreased domestic consumption or conservation will reverse current U.S. dependence on Persian Gulf oil — now in the vicinity of 9.8 million Bbls per day.

The important point is that upholding free access through critical maritime and aviation choke points has great significance for both the US and world economy as a whole. The LOS Convention would not have prevented the Iran-Iraq war. However, to the extent that the Convention's norms are observed on a daily basis by States bordering critical choke points, the US and world economies can remain free of economic blackmail.

The reality that U.S. economic interests are global underscores the need to uphold the transit rights under a widely accepted and comprehensive international legal regime, as provided by the Convention. Its dispute resolution provisions and its fixed rules for determining the breadth and access to maritime resources in the EEZ and continental shelf all support the "stability of expectations of investment bankers, insurance companies and others who underwrite and support shipping, offshore exploration and drilling and many other activities at sea."

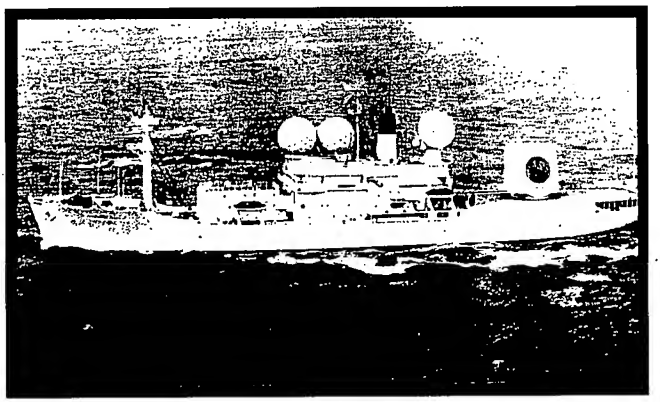
U.S. ECONOMIC INTERESTS AND MILITARY COMMAND AND CONTROL NEEDS DEPEND ON CONTINUED USE AND ACCESS TO HIGH SEAS AREAS FOR TELECOMMUNICATIONS

We are now witnessing a new global information age. Our role in the expanding global information market, and our economic dependence on that market, is immense and growing. To serve that market, investment in new undersea fiber-optic cable by American and other companies is expanding at a rate measured in billions of dollars. Particularly as competing uses of the sea and seabed expand, it is important that we maintain and



The LOS Convention codifies the right of nations to lay submarine telecommunications cables on the high seas and foreign EEZs. Use of the seas to establish fiber optic links has increased the access and quality and decreased the cost of intercontinental telecommunications from both a commercial and military standpoint.

Figure 5.



DOD has invested heavily in space based telecommunications systems which are, for the most part, in orbit over the oceans. This ubiquitous system ensures US forces are in constant contact with headquarters elements and decreases reliance on foreign frequency clearance or basing rights.

strengthen the perception of States that the cables are inviolable, and that adequate international and national procedures are available to deter interference and compensate for losses. The Convention expressly protects the freedom to lay and maintain cables beyond the territorial sea of any State and strengthens the legal protections from interference both in international tribunals and foreign courts.

Our defense strategy relies upon collection, assimilation, and retransmission of information. The great successes of US forces during the Persian Gulf conflict as well as the effectiveness of the recent NATO bombing campaign in Bosnia-Herzegovina testify to the importance of maintaining effective command, control, and communications systems (C^3). The use of submarine cables and maritime-based satellite telecommunications are the glue which holds our vast information system together. The high seas freedoms recognized in the Convention play a key role in DOD's continued use of undersea cables for national security purposes. ***[see Figure 5]***

Nine articles in the Convention protect the right of States to lay, maintain, and use submarine cables and pipelines on the seabed, including foreign EEZs and continental shelves as well as the international seabed area beyond. In archipelagic waters, States retain the right to use and maintain cables and pipelines which are currently in operation. This broad authority to lay and maintain submarine cables has proven to be of vital importance to the Defense Communications System. The trend in DOD communications roughly parallels the exponential growth in the commercial use of submarine fiber-optic cable for intercontinental telecommunications traffic.

The Convention's guarantees in this area are critical, since the Department of Defense currently relies on fiber-optic cable for approximately sixty percent of its telecommunications needs, and on other systems (satellite, microwave, and copper cable) for the remaining forty percent. Some of these fiber-optic systems are owned outright by DOD, and others are leased for exclusive DOD use. The reliability and low cost of fiber-optic communications enables DOD to have diversity in communications pathways and minimum periods of outage. It also frees up valuable satellite capacity for mobile and contingency-related ground and maritime operations.

THE LOS CONVENTION PROVIDES CLEAR AND CONCRETE RULES FOR DETERMINING THE LEGALITY OF MARITIME CLAIMS

One of the principal accomplishments of the LOS Convention is the establishment of a clear set of maritime zones: the territorial sea, contiguous zone, EEZ, and continental shelf, which uphold the resource and environmental interests of coastal States, balanced against the interest of maritime and trading

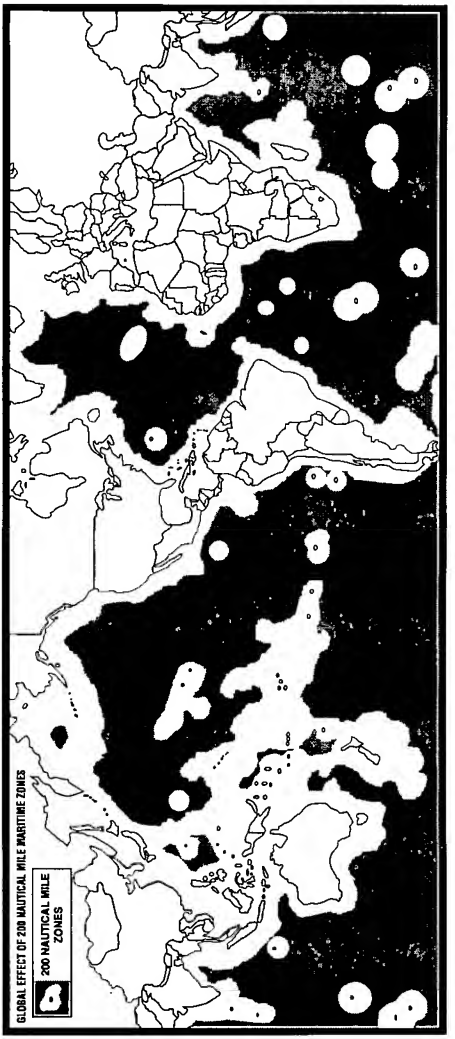


Figure 6. Jurisdictional Creep

The LOS Convention contains a key agreement between coastal States and maritime states that coastal States would have control of resources in the 200 NM EEZ in exchange for broad navigational rights beyond the 12 NM territorial sea. This agreement reversed a disturbing trend by coastal States to make 200 NM, or greater, territorial sea claims. As of July 1994, 19 States still claim territorial seas in excess of 12 NM. The chart shows the impact which excessive maritime claims have on navigational freedom. The white areas would come under coastal state territorial control if territorial seas were extended to 200 NM.

nations in open access to the oceans for navigation and overflight purposes. This careful balance of maritime zones appears to have reversed a disturbing trend known as "jurisdictional creep," whereby many coastal States claimed territorial seas of up to 200 NM in order to create a monopoly over coastal resources or for purposes of security. Despite the favorable current trend influenced by the Convention, excessive maritime claims may not disappear altogether, even if the United States becomes a party to the Convention. **However, as an insider, the U.S. certainly would be in a much stronger and more authoritative position to invoke the Convention's geographic and functional limits on coastal State authority over offshore areas.** Moreover, U.S. participation would all but ensure universality of the Convention, essentially guaranteeing that the provisions of the Convention will continue to be viewed as ***the*** governing rules of international law.

As a party to the Convention, the United States also will be entitled to make use of the dispute resolution apparatus to contest excessive claims. Since 1979, the United States has unilaterally contested excessive coastal claims diplomatically and operationally through the Freedom of Navigation (FON) Program. Those actions may still be required to enforce the norms of the Convention. However, to the extent we can decrease reliance upon FON challenges through enforcement of the Convention by diplomatic and legal means, the United States reduces political, military, and other costs. Also, because the Convention provides rules and procedures for fixing maritime boundaries, there should be a corresponding reduction in tension. ***[see Figure 6]***

THE LOS CONVENTION HELPS TO DEFUSE REGIONAL DISPUTES IN LITTORAL AREAS AND LIMIT THEIR EFFECT

The end of the Cold War has shaken conceptions about the foundations of international peace and security. As witnessed by recent regional conflicts in the Balkans and the former Soviet Union, and by ethnic rivalries in Africa, the nature of conflict is changing. The question today is less related to ideology; instead, actual and potential conflicts relate to who people are, where they will live, and what they will receive. Now and in the future, regional conflicts of one sort or another relating to religion, nationalist sentiments, etc., have the capability to outstrip the ability of the U.N. or regional security apparatus to find solutions. The conflicting claims of Greece and Turkey in the Aegean, the conflicting claims of six nations to the Spratly Islands, and the conflicting claims of five nations to the seabed resources of the Caspian are three regional areas which concern us because of the potential that any one of these situations may result in conflict. With respect to the Spratly Islands and the Aegean, there have been confrontations in the past.

Greece's statements that it intends to assert

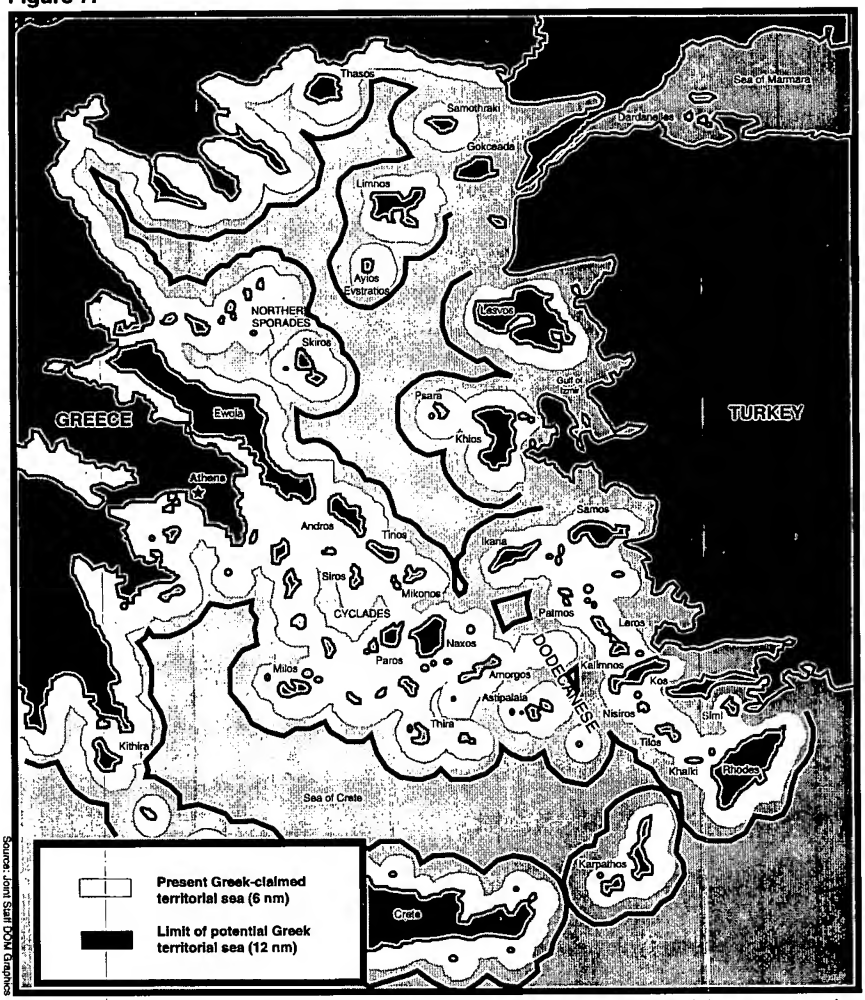
its right to extend its territorial sea (and airspace) claims in the Aegean has been a continuing source of friction, since this would reduce high seas areas now used by the Turkish Navy and others, and because Greece has also said that it will seek to limit passage through the Aegean's many island straits. Complicating the territorial sea and straits issue is the lack of any serious current proposals to deal with the delimitation of the Aegean's continental shelf. While little progress to resolve the Aegean dispute is likely unless Greece and Turkey accept the inevitability of bilateral negotiations, the LOS Convention provides both Greece and Turkey the framework of normative rules and dispute resolution machinery which can be used to positively affect the course of events in a region that has been troubled for many years.

The complexity of the Aegean dispute is rivaled by the diversity of conflicting claims in the Spratly Islands. U.S. policy with respect to the Spratlys is to take no position on the individual merits of any particular territorial claim to any of the rocks or islands. However, we have made it clear that the U.S. expects all claimants to refrain from engaging in any claims-related activities that would interfere with the navigation and overflight rights of maritime States in the South China Sea. Since the U.S. announced this policy on May 10, 1995, there has been a decline in the number of incidents in the region. And, following China's announcement that it would respect and apply the LOS Convention to the maritime aspects of the Spratlys dispute, there have been a series of meetings between the claimants. For the time being, at least, the potential application of LOS principles to the resolution of the Spratlys dispute has helped to stabilize the situation.

The rules set forth in the Convention have direct and indirect application to the critical issues arising from the exploitation and shipment of Caspian Sea oil to market. The first major group of issues involves delimitation of the Caspian Sea's oil and gas resources and fisheries among the five nations which have borders on the Caspian. Secondary issues relate to movement of the oil and gas through the Turkish Straits. The States concerned are considering the application of LOS principles to resolve issues of oil and gas rights and the rights of littoral communities to exercise freedom of navigation and utilize the Caspian's important fisheries resources. The Convention's rules regulating the creation of routing measures also have been used to enhance the safety of navigation of oil tankers passing through the Bosporus, the Sea of Marmara, and the Dardanelles (also known as the Turkish Straits), which is otherwise governed by the 1936 Montreaux Convention.

The Aegean, Spratly and Caspian disputes are three real-world examples where the principles embodied in a universal LOS Convention are being used to enhance international peace and security by defusing part or all of a dispute. This has already taken place in the Black Sea, where the U.S. and the U.S.S.R. used the rules of the Convention to resolve their disagreement concerning innocent passage rights in 1989, despite the fact that nei-

Figure 7.



Source: Joint Staff DOM Graphics

Completing claims to the Aegean's continental shelf, Greece's statements that it will establish passage corridors through the Aegean and that it will extend its territorial sea have resulted in past confrontations.

FIGURE 8.

A saltwater lake, the Caspian Sea's riches are being claimed by five nations. The transshipment of those oil and gas resources have unmasked new problems in which LOS principles are helpful.

ther country was then a party to the Convention. As history unfolds, the usefulness of the LOS Convention to resolve these disputes and others will become more apparent. It is fair to say that the use of comprehensive LOS provisions dealing with maritime boundaries, maritime zones, and rights of competing maritime users are fundamental to finding a basis for future agreement in trouble spots around the globe. ***[Figures 7 & 8]***

THE LOS CONVENTION ESTABLISHES IMPORTANT BENCHMARKS FOR PROTECTING THE MARINE ENVIRONMENT WHILE PRESERVING OPERATIONAL FREEDOMS

The Department of Defense is committed as a matter of policy to the norms established by Part XII of the Convention, which affirms that "States have the obligation to protect and preserve the marine environment." Although the Convention clearly provides for navigational access to the world's oceans, the practical ability of our naval forces to gain access to foreign ports and bases for distant operations and to resist varying types of coastal State claims is heavily influenced by the perceptions of coastal States that our warships and other public vessels are being operated in an environmentally responsible manner. The goal of our environmental program is to ensure that our shore installations and operational commands worldwide are able to accomplish their assigned missions while meeting our environmental obligations. To meet this overall goal of environmental compliance and to maintain credibility with the world community at large, the military departments have made a heavy commitment of resources to:

- Participate actively in the international organizations (such as the IMO) which adopt and promulgate realistic procedural and substantive environmental standards affecting maritime operations;
- Modify our operational practices and acquire modern waste processing equipment in order to mitigate the environmental impacts of military operations;
- Conduct extensive research to develop technical solutions to the problems of processing shipboard wastes and development of special coatings and industrial processes to further limit sources of pollution from ship hulls.

The Department will continue to be proactive in the area of environmental protection as a matter of national law and policy. Nevertheless, to resist excessive maritime claims and to maintain the principle of sovereign immunity (guaranteed in Article 236 of the Convention) will require a commitment to environmental protection, as well as sound management of environmental hazards.

The Convention solidifies the leadership position which the U.S. exercises in the IMO, based in London. The United States and all major maritime powers actively participate in the IMO, the institutional sponsor for a number of other related conventions, including:

- The 1973 Convention and 1978 Protocol for the Prevention of Pollution from Ships (MARPOL);
- The 1972 Convention on Prevention of Collisions at Sea (COLREGS); and
- The 1972 Convention on the Prevention of Marine Pollution (London Convention).

The Law of the Sea Convention is the common frame of reference for implementing these IMO-sponsored conventions. In the IMO context, the United States has successfully urged positions which tend to hold flag States accountable for failing to uphold applicable environmental protection norms. By the same token, over the years the United States has been successful in urging realistic and practical methods of dealing with unilateral restrictions on navigation and on the rights of sovereign immune vessels which would potentially impair our operational freedoms in the name of environmental protection. Once again, the Convention is the glue that holds together diverse maritime interests in the environmental field. By becoming a party to the Convention, the United States will be in a much better position to influence events in organizations like the IMO. Moreover, our general ability to curtail the growth of unilateral claims that restrict navigation also will be strengthened.

From the standpoint of promoting international peace and stability, the Department strongly supports the Convention because it is one of the few comprehensive, legally binding instruments committed to global environmental security. As noted above, DOD has made a significant policy and fiscal commitment to operate in an environmentally responsible manner to assure itself access to foreign ports, bases, and airfields, as well as to set a standard which other nations will follow. In examining the factors which precipitated the current and past instabilities in Haiti, Somalia, Rwanda, the Sudan and elsewhere among developing States, it is clear that environmental mismanagement played a role.

The Convention requires States: to ensure that activities under their jurisdiction do not cause environmental damage to other States or result in the spread of pollution beyond their own offshore zones; to minimize the release of harmful substances into the marine environment from land-based sources; to protect fragile ecosystems; and to conserve living resources. It serves U.S. national security interests to promote universal adherence to the Convention as a means to limit and resolve conflicts arising out of environmental degradation and the transboundary movement of pollutants.

THE CONVENTION PROVIDES AN IMPORTANT FOUNDATION FOR FUTURE EFFORTS TO IMPROVE THE LEGAL REGIME AFFECTING MANAGEMENT OF MARINE RESOURCES AND RESOLUTION OF CONFLICTS

The management of fish stocks is becoming

an increasingly contentious issue for those States which rely upon fishing to feed their populations. The U.N. Food and Agriculture Organization (FAO) predicts that demand for fish will be 100-120 million tons in 2010, when the world population will reach 7 billion, while present food fish production is only about 70 million tons.

Even though DOD's mission does not include fisheries management, it is well understood that competition for a decreasing stock of resources can result in conflict, as illustrated by the March 1995 "Turbot Dispute" between Canada and Spain. Thus, the Department has a legitimate interest in finding solutions or mechanisms to resolve conflict between coastal States and/or among fishing States competing for diminishing fish stocks which are beyond the scope of a nation's management jurisdiction. In addition to finding better ways to manage a comparatively smaller number of fish, it is apparent that international and regional cooperative measures must be taken to achieve a sustainable increase in fish production. ***[see Figure 9]***

The precipitous decline of world fish stocks is due largely to the lack of a coordinated approach to the management of fisheries resources. In this regard, the Convention provides the framework for empowering regional fishing organizations to deal with conservation issues. The Convention also levies important duties on coastal States to manage their fishery resources to the limits of their maximum sustainable yield, and take into account the rights of states which have traditionally fished in their waters. These principles are the legal cornerstones of the recently concluded FAO Reflagging Agreement in 1994, and the Agreement Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (which was opened for signature on December 4, 1995; the U.S. has become a signatory). The fisheries management precepts of the Convention, together with its encouragement to fishing States to enter into regional agreements, are fundamental to maintaining order between fishing and coastal States.

The United States has played an important role in promoting workable solutions to fisheries management problems. By joining the Convention, the U.S. will be in a much stronger position to exercise influence in efforts to achieve solutions to these problems, providing the U.S. with the tools to formulate workable diplomatic solutions.

The Convention also will keep in check the natural desire by coastal States to extend their sovereignty over offshore areas through the type of increased regulation which would be inimical to our navigation and overflight rights. Like the current trend in fishing disputes, States have proposed measures that encroach on navigational freedoms because of perceptions that navigation is harmful to the living marine resources or that navigation will interfere with exploitation of the resources of the continental shelf. Coral reef ecosystems are coming under tremendous

Canada Fires Warning Shots, Seizes Fishing Boat in International Waters

By Anne Swardson
Washington Post Foreign Service

HALIFAX, Nova Scotia, March 9—Canadian patrol boats fired warning shots at a Spanish fishing vessel in international waters today, then boarded it, arrested the captain and began towing the ship to a Canadian port in an action designed to stop what Canadian officials said was overfishing of turbot.

The European Union, which oversees fishing issues for its member nations, condemned Canada, calling the high seas dispute over turbot fishing an act of "organized piracy."

After a day of confusion about what actually occurred just outside Canada's 200-mile limit off Newfoundland, EU Fisheries Commissioner Emma Bonino said Canadian authorities tried to board the Estai around noon, but the boat got away. She added that the EU was keeping its options open to retaliate with diplomatic or trade sanctions, the Associated Press reported.

Canadian Fisheries Minister Brian Tobin, however, said officers from three Canadian fisheries and coast guard vessels boarded the Estai after two earlier attempts were foiled when Estai crew members cut their nets, cast off the boarding ladders and steamed away. The trawler stopped after the Canadian ships fired four 50mm warning shots.

The Estai, which was one of five Spanish boats fishing just outside Canada's territorial waters, was being taken to the Newfoundland port of St. John's tonight. Tobin said 95 percent of the contents of the trawler's freezers was turbot, a large flatfish also called a Greenland halibut. He added that the operation would continue Friday if any more trawlers were found fishing for turbot.

"These are the last viable commercial straddling stocks," Tobin said, referring to fish that cross between territorial waters and the open seas. "Without action at this time, that stock will not be around next year."

Today's incident marked a dramatic escalation of Canada's efforts to halt what it says is overfishing of its own fish stocks in international waters. Since last year, Canada has seized two American scallop-fishing vessels in international waters off Newfoundland, and arrested a Panamanian-registered trawler, also off the Grand Banks. It also temporarily imposed a $1,000 fee on American boats fishing for salmon off Canada's west coast last summer.

Canadian Fisheries Minister Brian Tobin locates site of incident on map.

EMMA BONINO
"organized piracy"

BY RICHARD FEINER—THE WASHINGTON POST

The Canadian Parliament last year approved legislation authorizing seizures on the high seas, contending that it can do so because two sections of its territorial fishing grounds on the Grank Banks extend into the high seas. The government issued regulations implementing that law last Friday.

In the case of turbot, Canada contends it can act because ships from Spain and Portugal have exceeded EU allocations of turbot that were established last fall by the Northwest Atlantic Fisheries Organization. The quotas reduced the EU allocation from 70 percent of the total catch to about 12 percent, which equates to about 3,400 metric tons of turbot. Canada contends the EU already has caught that amount.

Canada, one of the most aggressive nations in asserting its fishing rights, fears that turbot will go the way of the cod, a fish that formerly sustained much of Canada's east coast fishing industry but has been all but wiped out by overfishing. Tobin represents a district in Newfoundland, the province hardest-hit by the fishing crisis, in the Canadian House of Commons. He has been targeting the EU, whose catches of turbot in the Atlantic off Canada have risen more than tenfold in the last 10 years.

Prime Minister Jean Chretien spoke with EU President Jacques Santer by phone Wednesday night. Santer reportedly proposed negotiation; Chretien responded that the EU fishing vessels would have to leave first. The vessels pulled out Tuesday after Tobin first threatened to use force, but returned Wednesday.

Figure 9.

pressure because of population growth (3.5 billion of the 5.6 billion people on earth now live in coastal areas), poor resource management, and land-based sources of pollution. World attention has only recently been focused on this problem. Certain States have reacted by proposing creation of protected zones in marine habitat areas which could restrict access to or place them "off-limits" to navigation because of their special ecological sensitivity or importance to coastal fish stocks. DOD's perspective is that navigation is generally an environmentally benign activity if flag States properly regulate their flag vessels. That perspective is reinforced by both the "due regard" and environmental obligations on the flag State under the Convention. This helps to make clear that geographic restrictions on navigation are an unnecessary and harmful diversion of attention from the root cause of the problem: land-based sources of marine pollution.

Continued offshore development of areas of the continental shelf for fish farming and oil and gas extraction (particularly in critical choke points) will inevitably impact on the navigational freedoms which DOD must preserve to meets its operational commitments worldwide. At the Strait of Malacca Conference on June 14-15, 1994, the U.S. heard arguments that:

- The coastal State's right to explore for oil and use the Strait for economic development is greater than the international community's right to use the Strait; and
- The newness of the transit passage regime lends uncertainty as to whether the regime has become a customary practice of international law.

As noted in Figures 2 and 4, the Strait of Malacca is a strategic waterway that DOD uses to move forces from Pacific bases to the Indian Ocean and Persian Gulf. These arguments, coupled with the trend towards special zones which restrict or prohibit navigation, reinforce the basic theme that threats to freedom of navigation and the right of transit passage are still very real. It is clear that the Convention provides the best structural and normative framework for the United States to attack objectionable claims as well as address increasingly numerous conflicts over use of the seas.

SINCE THE UNITED STATES ALREADY REGARDS MOST OF THE NON-SEABED MINING PROVISIONS OF THE CONVENTION TO REFLECT CUSTOMARY INTERNATIONAL LAW, DOES THE UNITED STATES DERIVE ANY BENEFIT BY BECOMING A PARTY TO THE CONVENTION?

In the view of the Department of Defense, significant interests of the United States are advanced by becoming a party to the Convention:

- The Convention is the platform of principle on which we base our operations and strategic planning today. We can best secure that platform in a treaty ratified by us and the rest

of the nations of the world.

- Renegotiation of the Part XI Agreement was late in coming, in part, because many nations regarded the Convention to be a "package deal" and felt that all States should accept the good with the bad to maintain balance between the various groups of States which participated in the negotiation: developing vs. developed States; mineral-producing vs. non-mineral-producing States; coastal vs. maritime States. Consequently, Iran, for example, continues to assert that key navigational principles (particularly the regime of transit passage) are not customary international law but a contractual benefit flowing from the Convention. Our remaining a non-party to the Convention would tend to reinforce those arguments. There is also general agreement among maritime powers that rejection of a "reasonable" Convention by them could create a highly unstable situation vis-a-vis those States which have already ratified the Convention.

- From the standpoint of promoting global stability, universal accession to the Convention, as modified by the Part XI Agreement, will at last stabilize and fix the rules which States now argue do or do not exist as a matter of customary law. Unlike the 1958 Geneva Convention on the High Seas, which, according to its preamble, is a codification of "the rules of international law of the high seas," many international legal scholars view the LOS Convention as containing both provisions that codify customary international law and provisions that represent progressive development of the law. **Moreover, since many important provisions that protect our national security interests are found in the very carefully drafted details of the text, customary international law is unlikely to incorporate such detail and nuance.**

- The customary international law of the sea has proven to be highly unstable in this century. Because the Convention and related agreements largely satisfy the resource interests of coastal States, future instability in the law of the sea is even more likely to threaten our security, navigational and telecommunications interests than in the past. Our best chance to stabilize the law of the sea on an acceptable basis is to promote global ratification of the Convention. This provides us with a means to develop pragmatic solutions to new problems without debating or disturbing the core principles essential to our national security.

- We are moving into a new era where the Convention, having entered into force, will have much greater importance in maintaining the delicate balance between coastal State and maritime State interests. Much of the work to implement the Convention will occur in organizations such as the IMO, where government representatives will consider new treaties and regulations significantly impacting U.S. security interests without regard to customary international law. We risk losing our ability to speak with authority at these deliberations if we fail to join the Convention.

- Our principal allies are in the process of becoming parties to the Convention. Some have already done so. Delay or failure to join them will undermine alliance cohesion and impair our capacity to lead and to protect our interests not only on a global level, but among our allies.

- Time is of the essence if the U.S. is to par-

ticipate in two key events. Nominations for the International Tribunal for the Law of the Sea close in May 1996, and the election of its members will be held in August 1996. Members of the Commission on the Limits of the Continental Shelf are scheduled to be elected in March 1997. Only parties to the Convention may nominate and vote in elections to select members of these bodies, who will influence the interpretation and application of the Convention for years to come.

CONCLUSION

A universal regime for governance of the oceans is needed to safeguard U.S. security and economic interests, as well as to defuse those situations in which competing uses of the oceans are likely to result in conflict. In addition to strongly supporting our national security interests in freedom of navigation and overflight, the Convention provides an effective framework for serious efforts to address economic pressures upon the oceans resulting from land and sea-based sources of pollution and overfishing. Moreover, the Part XI Agreement provides us with a near-term opportunity to join with our allies and other industrialized nations in a widely accepted international order to regulate and safeguard the many diverse activities, interests, and resources in the world's oceans. Historically, this nation's security has depended upon our ability to conduct military operations and commerce over, under, and on the oceans.

The best guarantee that this free and unfettered access to the world's oceans will continue in the years ahead is for the U.S. to become a party to the Convention, as modified by the Agreement, at the earliest possible time.

NOTES

1. MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, AND THE AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI, S. TREATY DOC 103-39, 103d Cong., 2d Sess. (1994) [hereinafter *Transmittal Documents*].

2. 18 Weekly Comp. Pres. Doc. 877 (July 9, 1982).

3. *Id. See also,* James L. Malone, *The United States and the Law of the Sea*, 24 VA. J. INT'L L. 785 (1984).

4. 19 Weekly Comp. Pres. Doc. 383-385 (Mar. 10, 1983).

5. Dept. of State, *Limits in the Seas No. 112, United States Responses to Excessive National Maritime Claims* (March 9, 1992). Illegal claims which have been challenged include: improper straight baseline claims, excessive territorial sea claims, and claims which restrict the right of transit passage or innocent passage by all ships (including warships) without notice.

6. 24 Weekly Comp. Pres. Docs. 52 (Dec. 27, 1989).

7. G.A. Res. 263, U.N. GAOR, 48th Sess., U.N. Doc. A/48/L.60 (1994).

8. Under Article 6 of the Agreement, the Agreement will enter into force 30 days after 40 States have established their consent to be bound, provided that at least seven of the States come from the group of "Pioneer Investor" States, identified in Resolution II of the Final Act of the Third U.N. Conference on the Law of the Sea, and that five of these States are developed States. The pioneer investor States include France, India, Japan, the U.S.S.R., Belgium, Canada, Germany, Italy, The Netherlands, the United Kingdom, the United States, and any developing States that have committed levels of expenditure stipulated by paragraph 1(a)(i) of this Resolution.

9. William L. Schachte, Jr. (Rear Admiral, JAGC, USN, Ret.), Remarks before the 25th Annual Law of the Sea Conference, Law of the Sea Institute, University of Hawaii, 6-9 August 1991, Malmo, Sweden (Manuscript Available in DOD REPOPA Files).

10. *See* Articles 31, 32, 96 and 236, 1982 United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982, entered into force November 16, 1994.

11. *See Transmittal Documents,* at IX-X ("The Convention identifies four potential fora for binding dispute settlement: The International Tribunal for the Law of the Sea constituted under Annex VI; the International Court of Justice; an arbitral tribunal constituted in accordance with Annex VII; and a special arbitral tribunal constituted in accordance with Annex VIII for specified categories of disputes.").

12. John R. Stevenson & Bernard H. Oxman, *The Future of the United Nations Convention on the Law of the Sea*, 88 AM. J. INT'L L. 488 (1994).

13. Montreaux Convention on the Turkish Straits, July 20, 1936, 173 LNTS 213.

14. *See, e.g.*, Sherri Wasserman Goodman, Deputy Under Secretary of Defense for Environmental Security, *DOD's New Vision for Environmental Security*, DEFENSE ISSUES, Vol. 9, No. 24.

15. The IMO is recognized as the "competent international organization," in Article 211, to decide questions relating to vessel design and construction as well as restrictive navigational schemes to protect the environment (*e.g.*, traffic separation schemes in straits and archipelagic waters).

16. Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships of 1973, Done at London February 17, 1978. (Protocol incorporates, with modifications, the provisions of the 1973 convention, including its annexes and protocol.)

17. Convention on the International Regulations for Preventing Collisions at Sea, Done at London October 20, 1972, 28 UST 3459, TIAS 8587.

18. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, Done at Washington, London, Mexico City and Moscow, December 29, 1972, 26 UST 2403, TIAS 8165, 1046 UNTS 120.

19. *Safeguarding Future Fish Supplies: Key Policy Issues and Measures*, U.N. Food and Agriculture Organization, *paper prepared for* International Conference on the Sustainable Contribution of Fisheries to Food Security, Kyoto, Japan, December 4-9, 1995.

Figure 10.

WASHINGTON POST 13 FEB 1988 Pg. 23

Soviets Bump U.S. Ships In Black Sea

By George C. Wilson
Washington Post Staff Writer

Two small Soviet warships deliberately bumped two U.S. Navy ships steaming through the Black Sea within nine miles of the Crimean coast yesterday in a test of what constitutes Soviet territorial waters, according to the Defense Department.

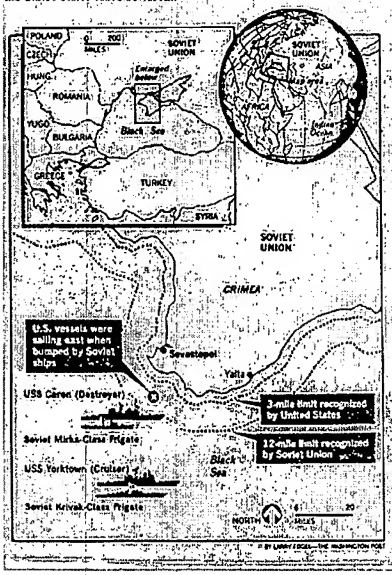
No serious injury or damage was inflicted by the slight collisions, Navy officials said. They said this was the first time in memory that the Soviets bumped ships in the Black Sea, although the Soviets protested a 1986 U.S. patrol in the same area. Washington and Moscow each blamed the other for provoking yesterday's collisions, and the United States called Soviet Ambassador Yuri Dubinin to the State Department yesterday morning to protest.

The Navy mission called for the destroyer USS Caron and the cruiser USS Yorktown to exercise the "right of innocent passage" by sailing past the Crimean peninsula inside the 12-mile limit that Moscow claims as territorial waters, according to the Pentagon. The United States claims a three-mile territorial limit.

Shortly before 11 a.m. (3 a.m. EST), the Navy said, one of the Soviet skippers steaming east off Crimea radioed this warning to the U.S. ships: "Soviet ships have orders to prevent violation of territorial waters. I am authorized to strike your ship with one of ours."

"We made no response on [the radio]," Capt. Gerrish C. Flynn said at a Pentagon briefing. "Our response was to continue on course and speed, which is what any prudent mariner would do." Flynn said a Soviet Badger bomber flew over the ships, apparently keeping track

BUMP . . . Pg. 6



WASHINGTON POST
16 FEBRUARY 1988 Pg. 17

Reagan Hadn't Approved Black Sea Maneuver

Knight-Ridder

President Reagan did not approve in advance a plan to challenge Soviet claims to a 12-mile territorial limit in the Black Sea last week, but knew in general about the program, White House officials said yesterday.

The U.S. challenge last Friday prompted two Soviet navy vessels to bump two U.S. warships less than 10 miles off the Crimean coast.

The United States asserts it is free to sail within three miles of any nation's coast.

No one was hurt in the incident, which caused minor damage.

Reagan's knowledge of the challenge had been unclear.

A White House official said yesterday that "while the president may not have known in advance about the exact timing and location of our warships in the Black Sea maneuvers, he is intimately familiar with our freedom of navigation program. [So he] was not taken unawares and he did not have to be briefed about what we were doing there."

The official said Secretary of State George P. Shultz, Defense Secretary Frank C. Carlucci and national security adviser Colin L. Powell gave advance approval of the plan.

WASHINGTON POST
24 FEBRUARY 1988 Pg. 46

Soviets Protest Collision Of Warships in Black Sea

Moscow Blames Incident on U.S. Vessels

By Gary Lee
Washington Post Foreign Service

MOSCOW, Feb. 13—Soviet Foreign Ministry spokesman Gennadi Gerasimov today protested yesterday's collision of U.S. and Soviet warships off the Soviet Black Sea coast, saying the incident was the fault of the American vessels.

"We cannot help but view this serious and dangerous incident as undermining recent improvements in relations," Gerasimov told a press conference today.

"We can only hope that this incident will not hinder the process of improvement in relations between our two countries, and in particular the forthcoming meetings between our defense and foreign ministers and the summit."

Gerasimov was referring to scheduled meetings between Soviet Defense Minister Dimitri Yazov and U.S. Defense Secretary Frank C. Carlucci March 16-17, between Secretary of State George P. Shultz and Soviet Foreign Minister Eduard Shevardnadze Feb. 21-23, and a summit meeting between Mikhail Gorbachev and President Reagan planned for later in the spring.

Gerasimov and Adm. Konstantin Makarov, first deputy commander in chief of the Soviet Navy, gave the Soviet version of the incident, which conflicted with the official U.S. version.

Two U.S. ships, the cruiser Yorktown and the destroyer Caron, entered Soviet coastal waters off the southern tip of the Crimean Peninsula and began approaching two Soviet frigates, Gerasimov said.

"Despite warning signals given by approaching Soviet vessels, the American ships did not react," Gerasimov said.

"Having intruded, the U.S. vessels maneuvered dangerously, and this led to a collision," he said.

"The collisions took place because of dangerous maneuvers by the American vessels," he added.

Gerasimov said U.S. Ambassador Jack F. Matlock had been summoned to the Foreign Ministry this morning, where Deputy Foreign Minister Alexander Bessmertnykh read him a "strong protest" over the incident.

Yesterday, American officials protested the incident to Soviet Ambassador Yuri Dubinin in Washington. They said that the two Soviet ships had deliberately rammed the U.S. vessels beyond the three-mile limit that the U.S. recognizes for Soviet territorial waters. The Soviets, however, claim a 12-mile limit.

A Pentagon official acknowledged that the two U.S. ships were within

PROTEST . . . Pg. 6

RESTRICTIONS ON FREEDOM OF NAVIGATION AND OVERFLIGHT

While U.S. military forces are generally free to navigate worldwide consistent with international law as reflected in the 1982 LOS Convention, there have been many instances where our rights have been challenged. Some examples:

- In 1967 the Soviet Union denied passage through the Northeast Passage in the Arctic to two U.S. Coast Guard icebreakers. As a result, they were unable to complete their mission. This route has been denied to U.S. surface vessels since then.

- In 1973, Libya enclosed a huge area of water in the Gulf of Sidra as an "historic bay." Although the world has largely rejected the claim, Libya's willingness to use force ("line of death") has deterred many from exercising their rights.

- In 1982 and 1987, Soviet forces interfered with the operations of U.S. naval frigates near Peter the Great Bay. The Soviets claim the bay as "historic" and the waters as internal. The United States considers these to be international waters.

- After the August 1985 transit of the U.S. Coast Guard icebreaker *Polar Sea* through the Northwest Passage, public opinion resulted in a restrictive Canadian law claiming high seas areas as internal waters and closing international straits. To maintain our access to the Northwest Passage, the United States agreed not to transit with Coast Guard icebreakers without Canada's consent to the conduct of marine scientific research during the passage.

- In January 1988, two Soviet border guard vessels intentionally "bumped" the *USS Caron* and *USS Yorktown* engaged in innocent passage in the territorial sea off the Crimean Peninsula. ***[see Figure 10]***

- Having claimed a 200 NM territorial sea since 1947, Peru regularly intercepts U.S. planes far off the coast of Peru. In 1989, the Chief of Staff of the Air Force was a passenger on an intercepted aircraft. Later, in April 1992, a Peruvian fighter aircraft intercepted and shot at a USAF C-130 aircraft, killing one crewmember and wounding two others. Peru attempted to justify its action asserting that the U.S. aircraft was within its illegal 200 NM territorial sea/airspace.

- In February 1995, two USAF C-130 aircraft en route from Panama to Chile were denied permission to enter Peru's airspace, well beyond 12 NM, because they did not have diplomatic clearance.

Other States' forces are even more constrained than the United States, often acquiescing in excessive maritime claims, because they do not have the naval resources to support operational challenges.

STATUS OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA AND AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI

As of December 31, 1995, there are 83 parties to the Law of the Sea Convention, 43 States (of the 79 States and entities to have signed the Agreement) have consented to be bound by the Agreement Relating to Implementation of Part XI, and 125 States and entities have agreed to apply the Agreement provisionally. Under Article 6 of the Agreement, the Agreement will enter into force 30 days after the requisite number of States have established their consent to be bound, provided that at least seven of the States come from the group of "Pioneer Investor" States, identified in Resolution II of the Final Act of the Third U.N. Conference on the Law of the Sea, and that five of these States are developed States. The pioneer investor States include France, India, Japan, the U.S.S.R., Belgium, Canada, Germany, Italy, The Netherlands, the United Kingdom, the United States, and any developing States that have committed levels of expenditure stipulated by paragraph 1(a)(i) of this Resolution.

Parties to the Convention on the Law of the Sea*

Angola
Antigua & Barbuda
Argentina
Australia
Austria
The Bahamas
Bahrain
Barbados
Belize
Bolivia
Bosnia-Herzegovina
Botswana
Brazil
Cameroon
Cape Verde
Comoros
Cook Islands
Costa Rica
Cote d'Ivoire
Croatia
Cuba
Cyprus
Djibouti
Dominica
Egypt
Fiji
The Gambia
Germany
Ghana
Greece
Grenada
Guinea
Guinea-Bissau
Guyana
Honduras
Iceland
India
Indonesia
Iraq
Italy
Jamaica
Jordan
Kenya
Kuwait
Lebanon
Former Yugoslav Republic of Macedonia
Mali
Malta
Marshall Islands
Mauritius
Mexico
Federated States of Micronesia
Namibia
Nigeria
Oman
Paraguay
Philippines
St. Kitts & Nevis
St. Lucia
St. Vincent & the Grenadines
Samoa
Sao Tome & Principe
Senegal
Seychelles
Sierra Leone
Singapore
Slovenia
Somalia
Sri Lanka
Sudan
Tanzania
Togo
Tonga
Trinidad & Tobago
Tunisia
Uganda
Uruguay
Vietnam
Yemen
Federal Republic of Yugoslavia**
Zaire
Zambia
Zimbabwe

Status of the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea

State Date of Signature	Date of Provisional Application [Notice of Non-application]	Date of Ratification
Afghanistan	November 16, 1994	
Albania	November 16, 1994	
Algeria - July 29, 1994	November 16, 1994	
Andorra	November 16, 1994	
Angola		
Antigua & Barbuda		
Argentina - July 29, 1994	November 16, 1994	December 1, 1995
Armenia	November 16, 1994	
Australia - July 29, 1994	November 16, 1994	
Austria - July 29, 1994	November 16, 1994	October 5, 1994
Azerbaijan		July 14, 1995
Bahamas - July 29, 1994	November 16, 1994	
Bahrain	November 16, 1994	July 28, 1995
Bangladesh	November 16, 1994	
Barbados - Nov. 15, 1994	November 16, 1994	
Belarus	November 16, 1994	July 28, 1995
Belgium - July 29, 1994	November 16, 1994	
Belize	November 16, 1994	
Benin	November 16, 1994	October 21, 1995
Bhutan	November 16, 1994	
Bolivia	November 16, 1994	
Bosnia & Herzegovina		April 28, 1995
Botswana	November 16, 1994	
Brazil - July 29, 1994	[July 29, 1994]	
Brunei Darussalam	November 16, 1994	Non-use of Art. 5***
Bulgaria	[November 15, 1994]	
Bukina Faso - Nov. 30, 1994	November 30, 1994	
Burundi	November 16, 1994	
Cambodia	November 16, 1994	
Cameroon - May 24, 1995	May 24, 1995	
Canada - July 29, 1994	November 16, 1994	
Cape Verde - July 29, 1994	November 16, 1994	
Central African Republic		Non-use of Art. 5
Chad		
Chile	November 16, 1994	
China - July 29, 1994	November 16, 1994	
Colombia		
Comoros		
Congo	November 16, 1994	
Costa Rica		
Cote d'Ivoire - Nov. 25, 1994	November 16, 1994	
Croatia	April 5, 1995	July 28, 1995
Cuba	November 16, 1994	April 5, 1995
Cyprus - Nov. 1, 1994	[November 15, 1994]	
Czech Republic - Nov. 16, 1994	November 16, 1994	July 27, 1995

State Date of Signature	Date of Provisional Application [Notice of Non-application]	Date of Ratification
Democratic People's Republic of Korea		
Denmark - July 29, 1994	[July 29, 1994]	
Djibouti		
Dominica		
Dominican Republic		
Ecuador		
Egypt - March 22, 1995	November 16, 1994	Non-use of Art. 5
El Salvador		
Equatorial Guinea		
Eritrea	November 16, 1994	
Estonia	November 16, 1994	
Ethiopia	November 16, 1994	
Fiji - July 29, 1994	November 16, 1994	July 28, 1995
Finland - July 29, 1994	November 16, 1994	
France - July 29, 1994	November 16, 1994	
Gabon - April 4, 1995	November 16, 1994	
Gambia		
Georgia		
Germany - July 29, 1994	November 16, 1994	October 14, 1994
Ghana	November 16, 1994	
Greece - July 29, 1994	November 16, 1994	July 21, 1995
Grenada - Nov. 14, 1994	November 16, 1994	July 28, 1995
Guatamala		
Guinea - August 26, 1994	November 16, 1994	July 28, 1995
Guinea- Bissau		
Guyana	November 16, 1994	
Haiti		
Holy See		
Honduras	November 16, 1994	
Hungary	November 16, 1994	
Iceland - July 29, 1994	November 16, 1994	July 28, 1995
India - July 29, 1994	November 16, 1994	June 29, 1995
Indonesia - July 29, 1994	November 16, 1994	Non-use of Art. 5
Iran	[November 1, 1994]	
Iraq	November 16, 1994	
Ireland - July 29, 1994	[July 29, 1994]	
Israel		
Italy - July 29, 1994	November 16, 1994	January 13, 1995
Jamaica - July 29, 1994	November 16, 1994	July 28, 1995
Japan - July 29, 1994	November 16, 1994	
Jordan	November 27, 1995	November 27, 1995
Kazakhstan		
Kenya	November 16, 1994	July 29, 1994
Kiribati		
Kuwait	November 16, 1994	
Kyrgyzstan		
Lao People's Democratic Republic	November 16, 1994	

State Date of Signature	Date of Provisional Application [Notice of Non-application]	Date of Ratification
Latvia		
Lebanon	January 5, 1995	January 5, 1995
Lesotho		
Liberia		
Libyan Arab Jamahiriya	November 16, 1994	
Liechtenstein	November 16, 1994	
Lithuania		
Luxembourg - July 29, 1994	November 16, 1994	
Macedonia (The Former Yugoslav Republic of)	November 16, 1994	August 19, 1994
Madagascar	November 16, 1994	
Malawi		
Malaysia - August 2, 1994	November 16, 1994	
Maldives - October 19, 1994	November 16, 1994	
Mali		
Malta - July 29, 1994	November 16, 1994	Non-use of Art. 5
Marshall Islands	November 16, 1994	
Mauritania - August 2, 1994	November 16, 1994	
Mauritius	November 16, 1994	November 4, 1994
Mexico	[November 2, 1994]	
Micronesia - August 10, 1994	November 16, 1994	September 6, 1995
Moldova, Republic of	November 16, 1994	
Monaco - November 30, 1994	November 16, 1994	
Mongolia - August 17, 1994	November 16, 1994	
Morocco - October 19, 1994	[October 19, 1994]	
Mozambique	November 16, 1994	
Myanmar	November 16, 1994	
Namibia - July 29, 1994	November 16, 1994	July 28, 1995
Nauru		
Nepal	November 16, 1994	
Netherlands - July 29, 1994	November 16, 1994	
New Zealand - July 29, 1994	November 16, 1994	
Nicaragua		
Niger		
Nigeria - October 25, 1994	November 16, 1994	July 28, 1995
Norway	November 16, 1994	
Oman	November 16, 1994	
Pakistan - August 10, 1994	November 16, 1994	
Panama		
Papua New Guinea	November 16, 1994	
Paraguay - July 29, 1994	November 16, 1994	July 10, 1995
Peru		
Philippines - Nov. 15, 1994	November 16, 1994	Non-use of Art. 5
Poland - July 29, 1994	February 23, 1995	
Portugal - July 29, 1994	[July 29, 1994]	
Qatar	November 16, 1994	
Rep. of Korea - Nov. 7, 1994	November 16, 1994	
Romania	[October 4, 1994]	

State Date of Signature	Date of Provisional Application [Notice of Non-application]	Date of Ratification
Russian Federation	January 11, 1995	
Rwanda		
Saint Kitts & Nevis		
Saint Lucia		
St. Vincent & the Grenadines		
Samoa - July 7, 1995	November 16, 1994	August 14, 1995
San Marino		
Sao Tome & Principe		
Saudi Arabia	[November 9, 1994]	
Senegal - August 9, 1994	November 16, 1994	July 25, 1995
Seychelles - July 29, 1994	November 16, 1994	December 15, 1994
Sierra Leone	December 12, 1994	December 12, 1994
Singapore	November 16; 1994	November 17, 1994
Slovak Federal Republic - Nov. 14, 1994	November 16, 1994	
Slovenia - January 19, 1995	[November 15, 1994]	June 16, 1995
Solomon Islands	February 8, 1995	
Somalia		
South Africa - October 3, 1994	November 16, 1994	
Spain - July 29, 1994		Non-use of Art. 5
Sri Lanka - July 29, 1994	November 16, 1994	July 28, 1995
Sudan - July 29, 1994	November 16, 1994	Non-use of Art. 5
Suriname	November 16, 1994	
Swaziland - October 12, 1994	November 16, 1994	
Sweden - July 29, 1994	[July 29, 1994]	
Switzerland - October 26, 1994	November 16, 1994	
Syrian Arab Republic		
Tajikistan		
Thailand		
Togo - August 3, 1994	November 16, 1994	July 28, 1995
Tonga		August 2, 1995
Trinidad & Tobago - October 10, 1994	November 16, 1994	July 28, 1995
Tunisia - May 15, 1995	November 16, 1994	Non-use of Art. 5
Turkey		
Turkmenistan		
Tuvalu		
Uganda - August 9, 1994	November 16, 1994	July 28, 1995
Ukraine - February 28, 1995	November 16, 1994	
United Arab Emirates	November 16, 1994	
United Kingdom-July 29, 1994	November 16, 1994	
United Republic of Tanzania - October 7, 1994	November 16, 1994	Non-use of Art. 5
United States of America - July 29, 1994	November 16, 1994	
Uruguay - July 29, 1994	[July 29, 1994]	
Uzbekistan		
Vanuatu - July 29, 1994	November 16, 1994	
Venezuela		

State Date of Signature	Date of Provisional Application [Notice of Non-application]	Date of Ratification
Viet Nam	November 16, 1994	
Yemen		
Yugoslavia - May 12, 1995	May 12, 1995	July 28, 1995
Zaire		
Zambia - October 13, 1994	November 16, 1994	July 28, 1995
Zimbabwe - October 28, 1994	November 16, 1994	July 28, 1995
Other Entities		
Cook Islands	February 15, 1995	February 15, 1995
European Economic Community - July 29, 1994	November 16, 1994	

*The following countries have informally indicated their intention to become party to the Convention once their internal ratification procedures are completed: Belgium, Canada, Chile, China, Denmark, Finland, France, Ireland, Japan, Republic of Korea, Luxembourg, The Netherlands, New Zealand, Panama, Portugal, South Africa, Spain, Sweden, Switzerland, Ukraine, and United Kingdom.

**Serbia and Montenegro have asserted the formation of a joint independent State as the successor to the Socialist Federal Republic of Yugoslavia (Serbia and Montenegro), but this entity has not been formally recognized as a State by the United States.

***State has notified the United Nations of its intent not to use the simplified procedure set forth in Article 5 to indicate its intent to be bound by the Agreement. This procedure was available to parties to the Convention until July 28, 1995, allowing them to consent to be bound to the Agreement by their silence. A State indicating that it would not use this simplified procedure, would be considered to be bound only after it had deposited an instrument of ratification, formal confirmation, or accession to the Agreement.

THE LAW OF THE SEA CONVENTION AND U.S. NATIONAL SECURITY INTERESTS

The Law of the Sea Convention will:

- **Preserve freedoms of navigation and overflight on the high seas.**
- **Maintain these high seas freedoms in the 200 NM Exclusive Economic Zones of coastal States [e.g., Vietnam].**
- **Guarantee freedom of navigation and overflight through international straits [most crucial are Gibralter, Hormuz, and Malacca].**
- **Establish the regime of archipelagic sea lanes passage [for transit through strategically located archipelagoes, such as Indonesia and the Philippines].**
- **Guarantee passage through foreign territorial seas along with a clear delineation of coastal State regulatory authority.**
- **Limit the width of the territorial sea to twelve nautical miles.**
- **Establish more objective rules for drawing baselines for measuring maritime zones [restrains coastal States from extending their jurisdictional reach farther seaward].**
- **Preserve the sovereign immune status of our warships and other public vessels and aircraft.**
- **Maintain the careful balance between coastal State jurisdiction over maritime pollution and the international community's navigational freedoms.**
- **Preserve the freedom to conduct military surveys seaward of foreign territorial seas [without the requirement to obtain the coastal State's permission].**

WHAT HAS CHANGED SINCE 1982?

- END OF THE COLD WAR
- NEW U.S. LITTORAL STRATEGY
- 1994 AGREEMENT MODIFYING PART XI
- 1995 AGREEMENT RELATING TO STRADDLING AND HIGHLY MIGRATORY FISH STOCKS
- INDUSTRIALIZED STATES JOIN THE CONVENTION